THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| ED HARTMAN, a sole proprietorship doing business as OLYMPIC MARIMBA RECORDS, ED HARTMAN PERCUSSION STUDIO and THE DRUM EXCHANGE; JANET HODGIN and MICHAEL HODGIN, a partnership doing business as KIDS NORTHWEST; and MICHAEL A. SPAFFORD, a sole proprietorship doing business as "SPIKE" MAFFORD PHOTOGRAPHY, individually and on behalf of a class of Washington residents similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>COMCAST BUSINESS COMMUNICATIONS, LLC, a Pennsylvania corporation, COMCAST CORPORATION, a Pennsylvania corporation and its subsidiaries and affiliates; MARKETOUCH MEDIA, INC., a Texas corporation,<br><br>Defendants. | CASE NO. C10-00413 RSL<br><br>DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT |

Rob Williamson and Kim Williams, hereby declare as follows:

1. We are two of the attorneys for the Plaintiffs in this action and proposed Class, and submit this declaration to provide the Court with further information regarding the

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background and negotiations that led to the proposed settlement that is submitted to this Court for preliminary approval.

2. On February, 2010, Plaintiffs filed a potential class action complaint (the "Hartman Complaint") in the Superior Court of the State of Washington for King County, Case No. 10-2-07644-1 SEA, captioned *Ed Hartman, et al. v. Comcast Business Communications, LLC, et al.* on behalf of a potential Washington state class alleging violations of RCW 80.36.400 (the "WADAD") and the Washington Consumer Protection Act (RCW 19.86), and seeking declaratory relief under the Washington Declaratory Judgment Act (RCW 7.24.010), all arising from the alleged delivery of pre-recorded messages for the purpose of commercial solicitation by automatic dialing and announcing device ("ADAD") allegedly done by or on behalf of Comcast. On March 12, 2010, pursuant to the Class Action Fairness Act, Comcast removed the case to the United States District Court for the Western District of Washington (the "Action").

3. After the Complaint was filed, another action was filed in King County Superior Court by other counsel on behalf of a separate Plaintiff, alleging substantially the same claims as those in the Hartman Complaint. Comcast also removed that action and it was assigned to Judge Coughenour. Counsel for the Plaintiffs agreed to co-counsel both cases, and on April 29, 2010 an Order was issued consolidating the two cases in this Court. (Dkt. # 13). A Consolidated Amended Complaint was filed on April 30, 2010 (Dkt. # 14).

4. On May 25, 2010, the Complaint was amended to add an additional defendant, Marketouch (Dkt. # 19). On June 8, 2010, Comcast filed a Motion to Dismiss (Dkt. #22) based on preemption, that the WADAD did not apply to business to business calls, that corporations were not covered by the WADAD and other grounds. The Motion was fully briefed.

Thereafter Marketouch filed its Motion to Dismiss (Dkt. #40), relying on the same grounds as

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Comcast as well as the claim that the WADAD required the calls in question to "initiate a conversation". That Motion was also fully briefed.

5. On August 1, 2010 the Court stayed the case pending an interlocutory appeal of another matter originating in the Western District on the preemption issue (Dkt. # 52). The stay was lifted on December 7, 2010 (Dkt. # 57). On January 19, 2011 (Dkt. # 63) the parties stipulated to another stay to permit mediation, which resulted in the Settlement Agreement now submitted to the Court for preliminary approval.

6. Comcast and Marketouch contend they are not liable for any claims asserted in the Action, that they have valid defenses to those claims, and that no Plaintiff nor any putative class member it purports to represent has suffered any recoverable damages.

7. The Parties' participated in a one day mediation in Seattle, Washington before the Honorable Terrance Lukens (Ret.) of JAMS on March 24, 2011 (the "Mediation"). The Settlement Agreement was not reached at the end of the mediation but after continued negotiations with the assistance of Judge Lukens, the case was settled, subject to Court approval. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

8. After conducting substantial investigation into the facts and law relating to the matters set forth in the Action regarding the claims asserted as well as Comcast's and Marketouch's legal and factual defenses, we have concluded that a settlement according to the terms set forth in this Agreement represents a fair, adequate and reasonable settlement of the Action and is in the best interest of the Settlement Class in light of the risks, costs and uncertainty of further litigating the Action, including the outcome on the Motions to Dismiss

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and the substantial benefits to be received by the Settlement Class pursuant to the terms of this Agreement;

9. In this case Plaintiffs alleged that Defendants had made illegal prerecorded telephone solicitations to businesses in the State of Washington. The legal bases for the claims of the class are derived from the Washington state statute forbidding prerecorded telephone solicitations by ADAD for the protection of consumers.

10. Prior to and during the mediation, counsel for the class learned that the total number of calls made by Marketouch on behalf of Comcast were 148,843 and that the total number of discrete telephone numbers involved (i.e. class members) was 242,183. We also determined that records of the telephone numbers called were available and that through using a reverse look up search, we could identify a substantial number of the names of the entities called and their current addresses. The Declaration of Jessica M. Andrade confirms this, noting that all but 609 addresses were identified.

11. The settlement that was reached at the mediation, including the notice process, payments to the class, and the charitable contributions were recommended by Judge Lukens. Judge Lukens believed that a settlement which provided payment to all class members who chose to make a claim was a desirable result compared to further litigation, and was also impressed with a settlement that paid for each call made rather than a single payment to each class member regardless of how many calls were made.

12. The parties were particularly concerned about providing clear yet comprehensive notice to class members, and agreed on a form of notice consisting of a direct mailing that provides essential information to most class members about the settlement and

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directs them to a webpage where they can obtain detailed information, or a phone number where that detailed information can be requested and questions can be answered.

13. It was particularly important to us that in a settlement which is claims made, and where claims rates and ultimate payments by Comcast cannot be predicted reliably, that some minimal charitable payment be made. Here Comcast has agreed to a substantial payment, $570,000, half of which will be paid to the Legal Foundation of Washington, one quarter to El Centro De La Raza and one quarter to Neighborhood House, charities that can continue their good work with these contributions.

14. It is difficult to ascertain the total number of claims that will be submitted. The Parties have agreed on a total settlement fund, from which the charitable payments will be made. Comcast will pay all costs of administration and notice, which we estimate will be approximately $250,000. If costs exceed that amount, Comcast has agreed to pay the additional amount, which will not count towards the Settlement Cap and will not affect calculation of payments to class members. Further Comcast has agreed it would not oppose Class Counsel's request to pay a class representative fees of $10,000 to each class representative and attorney fees and costs of $870,000, if approved by the Court. The settlement provides for Comcast to make payments capped at $3,800,000, leaving approximately $2,070,000 available for claims. The law provides for damages of $500 for violations of the WADAD. The settlement will pay each class member $100 for each call they received, understanding that if the total number of claims exceeds the available fund, payments will be prorated.

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15. Williamson and Williams is a two person law firm founded in 1998 and was originally in Seattle, Washington, moving to Bainbridge Island in 2008. Partners Rob Williamson & Kim Williams have practiced law in the civil litigation arena in the State of Washington for 29 years and 32 years respectively. Our practice has involved representing individuals in personal injury matters, including maritime and railroad injury cases, as well as product liability, employment and real estate matters. We have also represented individuals in matters assigned to the Multi-District Litigation process, namely the Latex Glove litigation in which our firm was lead counsel in Washington State, and the Vioxx litigation. We have represented over 150 workers in the engine department of the Washington State Ferries for hearing loss.

16. In the last several years, our practice has focused on complex civil and commercial litigation with an emphasis on consumer protection, primarily involving claims against banks and loan servicers for fees charged when consumers pay off their home loans, and actions under the Telephone Consumer Protection Act and its Washington State equivalent, involving junk faxing, robo-calling and solicitation text messages. We have extensive experience in class actions, collective actions, and other complex matters. We have been appointed lead or co-lead class counsel in numerous cases at both the state and federal level. The defendants in these cases have included companies such as, Best Buy, Comcast, AT&T, T-Mobile USA, Intuit, Sprint, Washington Mutual Bank, Clearwire, Domino's Pizza, Verizon, Payless Shoes, Talbots, Tween Brands, Countrywide and Homestreet Bank.

17. Both partners concentrate their practice in complex litigation, including the prosecution of consumer and wage and hour class actions. We have served as co-lead counsel

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on numerous multi-state and nationwide class actions. We have also handled a number of class action cases in the employment arena involving employers' failure to pay overtime. Defendants in those cases have included United Bakeries, Farmer Brothers Coffee, Dreyer's Ice Cream and Preston Gates Ellis. Ms. Williams received her B.A. from Whitman College and her J.D. from the Willamette University School of Law. Mr. Williamson received his B.A. from Princeton University and his J.D. from the Harvard Law School.

18. Williamson and Williams is currently litigating or has recently settled the following consumer protection class actions, among others:

- *Hicks v. Citigroup,* filed in 2011 on behalf of consumers who receive voluminous numbers of automated, pre-recorded collection phone calls on their personal cell phones in violation of the TCPA, the Fair Debt Collection Practices Act (FDCPA) and state law.

- *Kwan, Reasonover and Brown v. Clearwire,* filed in 2009 on behalf of consumers who receive voluminous numbers of automated, pre-recorded collection phone calls on their personal cell phones in violation of the TCPA, the Fair Debt Collection Practices Act (FDCPA) and state law.

- *Maclean v. Intuit,* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of the TCPA and state law.

- *Chesbro v. Best Buy,* filed in 2010 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of the TCPA and state and federal law.

- *Clark and Assing v. Payless Shoe Source,* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Hovila v. Tween Brands, Inc.,* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

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- *Cubbage v. Talbots, Inc.* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Palmer v. Sprint* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls to their cellular and residential telephones in violation of the TCPA and state law.

- *Meilleur v. AT&T* filed in 2011 on behalf of consumers who received automated, pre-recorded phone calls made for purposes of commercial solicitation in violation of the TCPA and state and federal law.

- *Baron & Hovila v. Direct Capital* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Hartman v. Capital for Merchants* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Maclean v. Stellar Concepts* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Gardner v. Capital Advance Solutions* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Hartman & Hodgins v . United Bank Card* filed in 2010 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Gardner v. US Merchant Systems* filed in 2011 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.

- *Seebach v. Allied Telesyn* filed in 2003 on behalf of consumers who received junk faxes in violation of state and federal law.

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- *Kavu Inc. v. Business Payment Systems* filed in 2006 on behalf of consumers who received junk faxes in violation of state and federal law.

- *Global Education Services, Inc. v The Grantsmanship Center* filed in 2005 on behalf of consumers who received junk faxes in violation of state and federal law.

- *Transportation Inc. v. Seattle PC Magic, Inc.* filed in 2003 on behalf of consumers who received junk faxes in violation of state and federal law.

- *Davis v. American General* filed in 2004 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.

- *Hardie v. Countrywide* filed in 2008 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.

- *Sando v. Homestreet Bank* filed in 2005 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.

- *Meier v. Wells Fargo Bank* filed in 2002 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.

19. In addition to a successful consumer protection practice, Williamson & Williams has litigated the following wage and hour class actions:

- *MacKenzie et al. v. Preston Gates & Ellis* filed in 2002

- *Hill, et al. v. Aramark Uniform* filed in 2001

- *Lapping v. American Cabulance* filed in 2007

- *Pinget et al. v. Dreyers Grand Ice Cream* filed in 2002

20. As reported above, we were involved in negotiating the proposed Settlement in this case and believe the Settlement provides an excellent result for Class members and is fair,

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adequate, and reasonable.

We declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct.

Dated: July 19, 2011 on Bainbridge Island, Washington.

s/RobWilliamson

s/Kim Williams

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## CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on July 25, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 25th day of July, 2011.

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# — EXHIBIT A —

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ED HARTMAN, a sole proprietorship doing business as OLYMPIC MARIMBA RECORDS, ED HARTMAN PERCUSSION STUDIO and THE DRUM EXCHANGE; JANET HODGIN and MICHAEL HODGIN, a partnership doing business as KIDS NORTHWEST; and MICHAEL A. SPAFFORD, a sole proprietorship doing business as "SPIKE" MAFFORD PHOTOGRAPHY, individually and on behalf of a class of Washington residents similarly situated,

Plaintiffs,

v.

COMCAST BUSINESS COMMUNICATIONS, LLC, a Pennsylvania corporation, COMCAST CORPORATION, a Pennsylvania corporation and its subsidiaries and affiliates; MARKETOUCH MEDIA, INC., a Texas corporation,

Defendants.

CIVIL ACTION NO. C10-00413 RSL

CIVIL ACTION/CLASS ACTION

**RELEASE AND SETTLEMENT AGREEMENT**

Plaintiffs Ed Hartman, a sole proprietorship doing business as Olympic Marimba Records, Ed Hartman Percussion Studio, and The Drum Exchange; Janet Hodgin and Michael Hodgin, a partnership doing business as Kids Northwest; and Michael A. Spafford, a sole proprietorship doing business as "Spike" Mafford Photography (collectively, "Lead Plaintiffs") on behalf of themselves and the Settlement Class (as defined in Paragraph 1, *infra*), and Defendants Comcast Business Communications, LLC and Comcast Corporation (collectively, "Comcast") (Lead Plaintiffs and Comcast shall be collectively referred to as "the Parties"), hereby enter into this settlement agreement ("Settlement Agreement") providing, subject to the approval of the Court, for the settlement of all claims asserted or which could have been asserted by Lead Plaintiffs or by any member of the Settlement Class, as defined in Paragraph 1, *infra*, against Comcast or against defendant Marketouch Media, Inc. ("Marketouch") in the case entitled *Hartman, et al. v. Comcast et al.,* United States District Court for the Western District of Washington at Seattle, Case No. C10-00413 RSL (the "Action") on the terms set forth below. The "Date of Settlement" shall be the date when the last required signator executes this Settlement Agreement.

**1. Class Certification, Class Representative, and Class Counsel.** For purposes of this Settlement Agreement, the Parties hereby stipulate to the certification of the following settlement class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3):

> All Washington businesses, including businesses operated out of residences, who received one or more commercial solicitations from Comcast directly or through its agents through the use of an automatic dialing and announcing device during the period of February 19, 2006, through the entry of the Preliminary Approval Order.

("Settlement Class" and, individually "Class Members"). The Settlement Class shall be certified by stipulation as set forth above for purposes of this Settlement Agreement only and without prejudice to contest the certification of any class should the Settlement Agreement not be approved by the Court as set forth herein. Subject to Court approval, Lead Plaintiffs shall be appointed by the Court as the class representatives of this Settlement Class and the law firms of Williamson & Williams, Terrell Marshall Daudt & Willie PLLC, and Gallagher Law Offices, PS shall be appointed by the Court as class counsel ("Class Counsel"). Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Lead Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby.

**2. Settlement Amount.** Pursuant to this Settlement Agreement. Comcast agrees to pay the sum of up to Three Million Eight Hundred Thousand Dollars ($3,800,000.00) ("Settlement Amount") for Release of all claims as defined, infra, in paragraph 13.

3. **Disbursement of Settlement Amount.** The Parties agree that the Settlement Amount should be distributed pursuant to this paragraph and Paragraph 4:as outlined herein:

a) First, to Class Members who make valid claims, in the amount of One Hundred Dollars ($100.00) to each Class Member submitting a valid claim for each call received, up to Two Million and Eighty Thousand Dollars ($2,080,000.00) total. In the event that Two Million and Eighty Thousand Dollars ($2,080,000.00) is insufficient to provide One Hundred Dollars ($100.00) to each Class Member submitting a valid claim for each call received, each such Class Member shall be entitled to receive a *pro rata* share of Two Million and Eighty Thousand Dollars ($2,080,000.00) in proportion to the total amount of Class Members submitting valid claims;

b) Second, to payment of the three Lead Plaintiffs the total sum of Ten Thousand Dollars ($10,000.00) for each Lead Plaintiff, including (1) Ed Hartman, a sole proprietorship doing business as Olympic Marimba Records, Ed Hartman Percussion Studio, and The Drum Exchange; (2) Janet Hodgin and Michael Hodgin, a partnership doing business as Kids Northwest; and (3) Michael A. Spafford, a sole proprietorship doing business as "Spike" Mafford Photography, for a total of Thirty Thousand Dollars ($30,000.00) for Lead Plaintiffs.

c) Third, to claims administration costs of up to Two Hundred Fifty Thousand Dollars ($250,000.00), provided that an Accounting is submitted as defined in Paragraph 6, *infra*. If claims administration exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), Comcast will pay the excess. If costs of claims administration are less than Two Hundred Fifty Thousand Dollars ($250,000.00), excess funds will be retained by Comcast;

d) Fourth, to a *cy pres* payment of 15% of the Settlement Amount, or Five Hundred Seventy Thousand Dollars ($570,000.00), one half of which, Two Hundred Eighty-Five Thousand Dollars, ($285,000.00), will be paid to The Legal Foundation of Washington, 1325 Fourth Avenue, Suite 1334, Seattle, Washington 98101 (the "Legal Foundation of Washington"), and one half of which, Two Hundred Eighty-Five Thousand Dollars ($285,000.00) will be paid in equal shares of One Hundred Forty Two Thousand and Five Hundred Dollars ($142,500.00) each to El Centro De La Raza, 2524 16th Avenue South, Seattle, Washington 98144 ("El Centro") and Neighborhood House, 905 Spruce Street, Seattle, Washington 98104 ("Neighborhood House");

e) Fifth, to payment in full to Class Counsel of all attorneys' fees and costs up to Eight Hundred Seventy Thousand Dollars ($870,000.00), subject to Court approval;

f) Sixth, in the event that there is a surplus of the Settlement Amount remaining after payment to every Class Member submitting a valid claim for each call received of up to One Hundred Dollars ($100.00) for each such call, claims administration costs, payment to Lead Plaintiffs, payment to Class Counsel and the cy pres payment, the remainder shall be retained by Comcast as outlined in Paragraph 4, *infra*.

No right, title, or interest in these funds transfers until the date of entry of a final approval of the Settlement Agreement and any such right, title or interest shall be subject to Comcast's right of reversion. Comcast shall pay additional administration costs if claims administration exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), but shall pay no additional sum or funds with regard to this Settlement Agreement.

**4. Funding of Settlement Amount.** The Settlement Amount is to be funded pursuant to this paragraph as outlined herein:

a) Within twenty (20) calendar days of the date of entry of a final approval order of the Settlement Agreement, and upon receipt of a valid tax identification number for each Lead Plaintiff and the US Bank Corporate Trust Account referred to below, Comcast shall pay or cause to be paid, in settlement of the claims, the sum of One Million Seven Hundred and Twenty Thousand Dollars ($1,720,000.00) into an interest-bearing US Bank Corporate Trust Account designated and controlled by the Claims Administrator, as defined in Paragraph 5, *infra*, (subject to Court oversight). This One Million Seven Hundred and Twenty Thousand Dollars ($1,720,000.00) shall be designated for payment of attorneys' fees, class representative fees, claims administration costs, and *cy pres* to the Legal Foundation of Washington, El Centro and Neighborhood House pursuant to paragraphs 3(a)-3(d) *supra*.

b) Within twenty (20) calendar days of the date of entry of a final approval order of the Settlement Agreement, Comcast shall pay or cause to be paid, in settlement of the claims, the sum of One Hundred Dollars ($100.00) for each call for which valid claims have been submitted by Class Members to the Claims Administrator, as defined in paragraph 5, *infra*, in an amount not to exceed Two-Million and Eighty-Thousand Dollars ($2,080,000.00), into an interest-bearing US Bank Corporate Trust Account designated and controlled by the Claims Administrator, as defined in paragraph 5, *infra*, (subject to Court oversight).

No funds will be distributed for claims administration in excess of what is reasonably required to effectively complete administration of claims to the Class Members, as determined by the Accounting defined in paragraph 6, *infra*. As provided above, if there is a surplus of the Settlement Amount after every Class Member submitting a valid claim receives One Hundred Dollars ($100.00) per call after class administration fees have been paid, and all other payments have been made under paragraph 3, all funds, including any accrued interest, shall revert to or be retained by Comcast.

**5. Claims Administration.** Rust Consulting, Inc. (hereafter "Claims Administrator") will administer and be responsible for the claims process. Administration elements of this Settlement will involve mailing postcard notice to the Class Members, creation of an Internet site, and a claim review and payment process.

**5.1** The Claims Administrator shall provide a notice to the Class Members in the manner set forth in paragraph 8 of this Settlement Agreement and in Exhibit B to this Settlement Agreement.

**5.2** No later than the date of the commencement of the notice program, the Claims Administrator shall establish an Internet site which shall contain copies of the Settlement Agreement and Exhibits and the and the Class Notice (as defined in paragraph 8, *infra*) which may be downloaded or printed from the Internet site, a set of Frequently Asked Questions ("FAQs") concerning the Action, the opt-out process, and the claims process. The Internet site shall remain open and accessible no less than sixty (60) days after the entry of an order giving final judgment and approval to this Settlement Agreement.

**5.3** The Claims Administrator will determine, in good faith, the validity of the claims and examine the proofs submitted on claims using their records and other available information, including by verifying that the telephone number submitted by any potential Class Member is included in the call records provided by Comcast and Marketouch. A Class Member that submits Claim Form (as described in paragraph 11, *infra*), signed under penalty of perjury, verifying and affirming that the Class Member received one or more automated commercial solicitations from Comcast, at a number included in the call records provided by Comcast and Marketouch and within the class period, and provides a valid tax identification number, shall be deemed to have submitted adequate proof. Comcast shall consult with Class Counsel, using its own records and other available information, to resolve disputed claims.

**5.4** All claims forms shall be sent to Rust Consulting, Inc. at Claims Administrator, PO Box 2518, Faribault, Minnesota 55021-9518. No later than thirty ((30) days following the end of the Claims Period, the Claims Administrator will submit a report to Comcast and Class Counsel setting forth the total number and amount of claims submitted, the total value of all valid claims, the dollar value of claims rejected as invalid, the claims rejected and the reasons for such rejections. In the event Comcast and Class Counsel cannot resolve any disagreements over the validity of any rejected claims, the matter will be submitted by Class Counsel in writing to the Court, with an opportunity to respond for Comcast. To the extent Claims are rejected, the claimant will be provided by Class Counsel with written notice of the rejection, and the reason for the rejection.

**6. Accounting.** The Claims Administrator shall cause to be maintained at all times detailed written accounts ("Accounting") that reflect, separately for each sub-account that may be established hereunder and in the aggregate: (1) the principal amounts deposited into the Settlement Fund by Comcast; (2) the earnings thereon; (3) the fees and expenses (including legal expenses and claims administration fees) paid, assessed or debited pursuant to this Settlement Agreement; (4) the amounts transferred or disbursed from the Settlement Fund pursuant to Paragraphs (2) and (3) above; (5) the total number of claims submitted; and (6) the total amount of valid claims represented thereby.

**7. Preliminary Approval Order.** Class Counsel shall file a Motion for (a) preliminary approval of the Settlement Agreement; (b) class certification for purposes of settlement only; (c) approval of the Class Notice (as defined in paragraph 8, *infra*); and (d) scheduling of final approval hearing. Class Counsel shall note such motion no later than forty-five (45) days after this Settlement Agreement is signed by all Parties. A copy of the [Proposed] Order Granting Preliminary Approval of Settlement Agreement, Class Certification, Approving Class Notice and Scheduling a Final Settlement Approval Hearing ("Preliminary Approval Order") agreed to by the Parties is attached hereto as Exhibit A.

**8. Notice of Settlement.** The Parties agree to the content of the Notice of Settlement of Class Action ("Class Notice") substantially in the form of Exhibit B, a copy of which is attached hereto. The Class Notice will include dates by which potential Class Members must choose to make claims, be excluded, or file objections, if any, to the Settlement, which will be sixty (60) days from the date the Class Notice is mailed by the Claims Administrator. The Class Notice will also advise Class Members that Class Counsel will file their request for approval of their attorney fees and costs no later than forty (40) days after Class Notice has been mailed, and that the request will also be posted to the website, so that Class Members will have twenty days to consider and file any objections they may have to said request. The Class Notice will also direct Class Member to the Internet website established and maintained by the Claims Administrator. Class Notice will be provided by United States mail, based upon identification of addresses of Class Members by conducting searches of directories for the telephone numbers called as indicated in the records of Comcast and Marketouch. Class Members whose Class Notices were sent to valid addresses but are returned undeliverable shall not be entitled to receive a distribution from the Settlement Amount. No later than fourteen (14) days prior to the final approval hearing, the Claims Administrator will file a declaration, with a copy to Class and Defendant's Counsel, attesting that Class Notice was disseminated by the Claims Administrator in a manner consistent with the terms of this Settlement Agreement.

**9. Procedure for Requesting Exclusion from the Settlement Class**. Class Members who wish to exclude themselves from the Settlement Class must submit a written statement requesting exclusion from the Settlement Class. Such written request for exclusion must contain the name, address, phone number and email address of the Class Member requesting exclusion, and must be returned by certified mail to the Claims Administrator and postmarked no later than sixty (60) days after mailing of Class Notice. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any recovery under the Agreement and will not be bound by the Agreement or have any right to object, appeal or comment thereon.

Class Members who fail to submit a valid and timely request for exclusion on or before sixty (60) days after mailing of Class Notice shall be bound by all terms of the Settlement Agreement and any Final Judgment entered in the Action.

**10. Procedure for Objecting to the SettlementAgreement**. Class Members who wish to object to the Settlement Agreement or to Class Counsel's request for fees or payments to the Lead Plaintiffs must file in the Action and serve counsel for the Parties a Notice of Objection and/or Intent to Appear. Such Notice of Objection and/or Intent to Appear must be filed with the Court and be served on counsel for the Parties at the addresses specified in the Class Notice no later than sixty (60) days after mailing of Class Notice. No Class Member shall be entitled to be heard at the Hearing (whether individually or through separate counsel) or to object to the Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Hearing, unless such written notice is provided by the Objection Deadline. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Notice of Objection and/or Intent to Appear has been timely submitted. Class Members who fail to file and serve a timely Notice of Objection and/or Intent to Appear in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

**11. Making Claims**. All Class Members who submit a timely and valid claim form ("Claim Form") substantially in the form of Exhibit D, a copy of which is attached hereto, that the Claims Administrator determines to be valid, will be entitled to receive $100.00 for each call received unless the amount of claims exceeds $2,080,000.00 in which case payments will be pro-rated as set forth in Paragraph 3(a) of this Settlement Agreement. Class Members must submit the Claim Form by first-class mail, or other method permitted by the Claims Administrator, according to the instructions set forth in the Class Notice and Claim Form. To be timely, the

Class Member must complete the Claim Form and submit all requested information in accordance with the instructions set forth in the Class Notice and Claim Form within sixty (60) days of the mailing of Class Notice. To be valid, the Class Member must fill out the required portions of the Claim Form in their entirety (including without limitation name, address, as well as the approximate date and phone number on which the Class Member received the purported pre-recorded phone solicitation), date the Claim Form, and sign the Claim Form under penalty of perjury that the information supplied is true and correct according to the best of the Class Member's personal knowledge and belief. In its determination of whether or not the claim shall be approved, the Claims Administrator shall cross-check and verify that the phone number provided by the Class Member is included in records provided by Defendants of the phone numbers called. The payment to a Class Member shall be determined based on the number of calls made to that phone number.

**12. Order for Final Judgment.** At the Final Settlement Hearing, Class Counsel shall petition the Court in the Action to enter an order for final judgment that approves this Settlement Agreement, and dismisses the claims of the Class with prejudice, substantially in the form of Exhibit C, a copy of which is attached hereto. The Parties agree that Final Judgment shall be entered in accordance with that Order substantially in the form of Exhibit E, a copy of which is attached hereto.

**13. Release of Claims.** The Settlement Agreement provides for the release by Class Members ("Release"), for the period beginning February 18, 2006, through the date of entry of the Preliminary Approval Order ("Class Period") as follows:

**13.1** Upon final approval of the terms of this Settlement Agreement by the Court, the Class Members, on behalf of themselves, their descendants, ancestors, dependents, heirs, executors, and administrators, and on behalf of each of their past and present predecessors, successors, assigns, subsidiaries, affiliates, parents, operating entities, employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, jointly and severally, fully and forever release Comcast and Marketouch, and each of their past and present predecessors, successors, assigns, subsidiaries, affiliates, and operating entities, and each of their respective past and present employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, of and from any claim, duty, obligation, lien, demand, damage, cause of action, or liability of any nature whatsoever, whether or not now known, suspected, pled, or claimed, whether raised by claim, counterclaim, setoff or otherwise, that any of them ever had, now has, or may claim to have had, that relates to, or otherwise arises from the Action or any allegations or claims raised therein (the "Released Claims"). Released Claims do not include (1) claims arising from the delivery of pre-recorded messages that were not delivered by or on behalf of Comcast; or (2) claims that do not arise as a result of Comcast directly or indirectly using an automatic dialing and announcing device for business to business solicitation calls.

**13.2** Comcast and Marketouch shall provide admissible sworn testimony, whether by declaration or otherwise, about the following: (1) during the Class Period, the only vendor Comcast used to deliver pre-recorded commercial solicitation messages to businesses in Washington State was Marketouch; and (2) during the Class Period, Marketouch used automatic dialing and announcing devices to place calls to Washington businesses for the purposes of commercial solicitation on behalf of Comcast that resulted in 242,183 connections; and (3) Comcast only used Marketouch to place solicitation calls using automatic dialing and announcing devices to Washington businesses during the Class Period (in other words, it did not place such calls itself). Comcast acknowledges these representations relate to a material term of this Settlement and that Class Counsel have relied on the same.

**13.3** This settlement shall be subject to Plaintiffs being provided such testimony as detailed in Paragraph 10.2 above, to be completed within thirty (30) days after execution of this Settlement Agreement.

**13.4** The foregoing Release does not extend to any rights or obligations incurred under the Settlement Agreement.

**13.5** Waiver of California Civil Code Section 1542. Upon final approval of the terms of this Settlement Agreement by the Court, all Class Members shall be deemed to each expressly assume the risk that, by entering into this Settlement Agreement and the Releases contained herein, each will forever waive claims for damages relating to the Released Claims that he or she or it does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement. In that regard, the Class Members expressly waive the protections and provisions of California Civil Code Section 1542, which provides that:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

**13.6** The Parties recognize, acknowledge, understand and assume the risk and possibility that any and all rules of law that have or might have induced the Parties to enter into and execute this Settlement Agreement may be different from the Parties' present, past or future understanding and interpretation of the law. The Parties nonetheless agree that this Settlement Agreement and the Releases contained in it shall remain firm, valid, binding and in full force and effect as a release notwithstanding any misunderstanding or misinterpretation law.

**14. Dismissal With Prejudice.** Upon approval of the entry of the Order of Final Judgment, Lead Plaintiffs and the Settlement Class shall dismiss the Action with prejudice. Further, Lead Plaintiffs specifically authorize their attorneys to prepare and execute any and all documents reasonably necessary to effectuate the dismissal with prejudice.

**15. Award of Attorneys' Fees and Costs and Class Representative Payment.** At the Final Settlement Hearing, Class Counsel shall petition the Court in the Action to enter an order for an award of attorneys' fees and costs in this Action not to exceed Eight Hundred and Seventy Thousand Dollars ($870,000.00), approving the costs of administration of the settlement including costs related to notice up to Two Hundred Fifty Thousand Dollars ($250,000.00), and to enter an award to Lead Plaintiffs an incentive payment and payment for all claims in a sum equal to Ten Thousand Dollars ($10,000) each for a total of Thirty Thousand Dollars ($30,000.00). The amount to be allocated for costs of administration is Two Hundred Fifty Thousand Dollars ($250,000.00), provided that the Claims Administrator provides an Accounting as defined in Paragraph 6, *supra*. Any amount of the Two Hundred Fifty Thousand Dollars ($250,000.00) allocated for claims administration costs remaining after the Claims Administrator has completed the administration of claims to the Class Members, and after the Claims Administrator provides an Accounting as defined in Paragraph 6, *supra*, shall be retained by Comcast. If the costs reasonably required to effectively complete the administration of claims to the Class Members exceed Two Hundred Fifty Thousand Dollars ($250,000.00), as shown by the Accounting provided pursuant to Paragraph 6, *supra*, Comcast will pay the excess. Payments to the Settlement Class, attorneys' fees, the class representative fee, and *cy pres* shall be paid from the Settlement Amount only and from no other source. Defendants do not object to Class Counsel's petition for attorneys' fees and the class representative fee.

**16. Effect of Court Disapproval.** In the event the Court in this Action or any other Court (a) disapproves, sets aside, or modifies this Settlement Agreement; (b) declines for any reason to enter or give effect to a Preliminary Approval Order; (c) declines for any reason to enter or give effect to an Order for Final Judgment; or (d) holds that the Order for Final Judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way, then the Parties shall use their best efforts to effectively repair deficiencies in order to obtain Court approval, provided that such best efforts shall not be deemed to require Comcast to pay any additional sums than is provided herein, or receive any less percentage of funds retained as provided in Paragraph 4 herein. In the event such efforts are unsuccessful, and after the passage of sixty (60) days from the date of the Court's actions outlined in Paragraph 13 (a)-(d) herein, then this Settlement Agreement shall become null and void, and the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Settlement Agreement, except that Comcast will be allowed to re-instate its motion to dismiss, previously filed at Dkt. No. 22. Upon such an occurrence, the Parties jointly shall move that any and all orders entered pursuant to this Settlement Agreement be vacated and shall proceed with the Action as if this Settlement Agreement had never been executed; provided, however, that in the event that the Parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, this Settlement Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the Parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned. In the event the Settlement Agreement is determined null and void, the Parties shall not refer to the fact and terms of this Settlement Agreement to establish liability or otherwise support the Parties' substantive positions in the Action, and any and all funds paid, less actual expenses incurred by the Claims Administrator, shall be returned to Comcast forthwith.

**17. Effective Date of Settlement.** The settlement and release of claims contemplated by this Settlement Agreement shall be deemed effective, and the Parties and members of the Class shall be definitively bound thereto, on the date (the "Effective Date") that is ten (10) days after the date each and all of the following conditions have occurred: (a) this Settlement Agreement has been signed by Lead Plaintiffs, Comcast, and Class Counsel; (b) orders have been entered by the Court granting preliminary approval of this Settlement Agreement, and approving a form of notice, as provided in Paragraphs 7 and 8, above; (c) the Court in the Action has entered an order as provided in Paragraph 7, above; and (d) the judgment has become final. The date the judgment has become "final" is thirty (30) days after entry of judgment if no appeal is filed by an objector. If an appeal is taken or review is sought of the judgment, the judgment becomes "final" the day after the mandate is issued or the appeal or other petition for review is dismissed or subsequent appellate or review proceedings concluded. Upon the occurrence of the Effective Date: (1) the Settlement Agreement shall provide the exclusive remedy for any and all released claims of Class Members; (2) Comcast and Marketouch shall not be subject to liability or expense of any kind with respect to the released claims to any Class Members except as set forth herein; and (3) Lead Plaintiffs and the Class Members who have not submitted valid and timely claims shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Comcast and/or Marketouch in any federal or state court in the United States or any other tribunal.

**18. Washington Law.** The rights and obligations of the Parties hereto are to be construed, interpreted and enforced solely in accordance with the laws of Washington State, without giving effect to any conflict of laws principles.

**19. Alternative Dispute Resolution.** In the event any dispute arises as to the interpretation or enforcement of the terms or language of the Settlement Agreement, the Parties agree to refer the dispute to Judge Terry Lukens first for mediation and, if that fails, binding arbitration.

**20. Execution in Counterparts.** This Settlement Agreement may be executed in one or more counterparts and delivered by facsimile to counsel. All executed counterparts, including those delivered to counsel by facsimile, and each of them shall be deemed to be one and the same instrument. A facsimile copy shall be considered an original for all purposes.

**21. No Admission**. The Parties specifically understand that the promises made in accordance with this Settlement Agreement are not to be construed as an admission by any of the Parties for any purpose and understands that the Parties all deny liability for the allegations made in the Action. Lead Plaintiffs further understand that this settlement has been made for business reasons. Nothing in this Settlement Agreement is to be construed as defendants agreeing that this case was appropriate for class action status or certification. This provision shall survive the expiration or voiding of the Settlement Agreement.

**22. Modifications Only in Writing and Authorization of Class Counsel.** This Settlement Agreement may be amended or modified only by a written instrument signed by all of the undersigned Parties or their assignees or successors-in-interest, and the undersigned counsel; except that Lead Plaintiffs, individually and as class representatives, expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and also expressly authorize Class Counsel to enter into such modifications or amendments to this Settlement Agreement on behalf of the Settlement Class as Class Counsel deem appropriate. This Settlement Agreement reflects the entire agreement of Lead Plaintiffs, the Class and Comcast relative to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises.

**23. Integrated Agreement.** All of the Exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the Exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the settlement of the Action.

**24. Severability.** If any clause, provision or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or paragraph of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph or other provisions had not been contained herein.

**25. Legal Representation.** The Parties to this Settlement Agreement acknowledge that they have been represented by qualified legal counsel both in connection with the Action and in connection with the negotiation, drafting and execution of this Settlement Agreement. Accordingly, the language used in this Settlement Agreement will be deemed to be language chosen by all Parties hereto to express their mutual intent, and no rule of strict construction against any party hereto will apply to any term or condition of this Settlement Agreement.

**26. Approval Procedure.** The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement. All applications for Court approval or Court orders required under this Settlement Agreement shall be made on notice to Class Counsel and defendant's Counsel.

**27. Court Jurisdiction.** The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under and pursuant to the authority of the Court. The Court shall retain jurisdiction to protect, preserve and implement the settlement, including, but not limited to, the Release.

**28. Litigation Expenses.** Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her or its own expenses related to the Action.

**29. Commercially Reasonable Efforts.** The Parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of this Settlement Agreement, and to use commercially reasonable efforts to perform all terms of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties enter into this Settlement Agreement this 21st day of July, 2011.

COMCAST BUSINESS COMMUNICATIONS, LLC

By ______________________________

COMCAST CORPORATION

By ______________________________

LEAD PLAINTIFFS

By ______________________________
Ed Hartman, a sole proprietorship doing business as Olympic Marimba Records, Ed Hartman Percussion Studio, and The Drum Exchange.

By ______________________________
Janet Hodgin and Michael Hodgin, a partnership doing business as Kids Northwest.

By ______________________________
Michael A. Spafford, a sole proprietorship doing business as "Spike" Mafford Photography

WILLIAMSON AND WILLIAMS

By ______________________________
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

TERRELL MARSHALL DAUDT & WILLIE PLLC

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IN WITNESS WHEREOF, the Parties enter into this Settlement Agreement this _____ day of ________________, 2011.

COMCAST BUSINESS COMMUNICATIONS, LLC

By ________________________________

COMCAST CORPORATION

By ________________________________

LEAD PLAINTIFFS

By ________________________________
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By ________________________________
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

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COMCAST

By ______________________________

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WILLIAMSON AND WILLIAMS

By ______________________________
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

TERRELL MARSHALL DAUDT & WILLIE PLLC

By ______________________________
Beth E. Terrell, WSBA # 26759
Attorney for Plaintiffs

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COMCAST

By ______________________________

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By ______________________________
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

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By ______________________________
Beth E. Terrell, WSBA # 26759
Attorney for Plaintiffs

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COMCAST

By ______________________________

LEAD PLAINTIFFS

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By ______________________________
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

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By ______________________________
Beth E. Terrell, WSBA # 26759
Attorney for Plaintiffs

Gallagher Law Office PS

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IN WITNESS WHEREOF, the Parties enter into this Settlement Agreement this _____ day of _______________, 2011.

COMCAST

By ______________________________

LEAD PLAINTIFFS

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By _______________________________
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By _______________________________
Michael A. Spafford, a sole proprietorship doing business as "Spike" Mafford Photography

WILLIAMSON AND WILLIAMS

By /s/ Rob Williamson, WSBA #11387
Rob Williamson, WSBA #11387
Attorneys for Plaintiffs

TERRELL MARSHALL DAUDT & WILLIE PLLC

By /s/ Beth E. Terrell, WSBA #25759
Beth E. Terrell, WSBA # 26759
Attorney for Plaintiffs

Gallagher Law Office PS

By /s/ Daniel C. Gallagher, WSBA #21940
Daniel C. Gallagher, WSBA # 21940
Attorney for Plaintiffs

# — EXHIBIT A —

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ED HARTMAN, a sole proprietorship doing business as OLYMPIC MARIMBA RECORDS, ED HARTMAN PERCUSSION STUDIO and THE DRUM EXCHANGE; JANET HODGIN and MICHAEL HODGIN, a partnership doing business as KIDS NORTHWEST; and MICHAEL A. SPAFFORD, a sole proprietorship doing business as "SPIKE" MAFFORD PHOTOGRAPHY, individually and on behalf of a class of Washington residents similarly situated,

Plaintiffs,

v.

COMCAST BUSINESS COMMUNICATIONS, LLC, a Pennsylvania corporation, COMCAST CORPORATION, a Pennsylvania corporation and its subsidiaries and affiliates; MARKETOUCH MEDIA, INC., a Texas corporation,

Defendants.

CIVIL ACTION NO. C10-00413 RSL

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, NOTICE TO CLASS MEMBERS, AND SCHEDULING FINAL APPROVAL HEARING**

This matter came before the Court on the basis of Plaintiffs' Motion For Preliminary Approval of Class Action Settlement, Notice to Class Members, and Scheduling a Final Approval Hearing has come before this Court (the "Motion for Preliminary Approval"). Plaintiffs and defendants Comcast Business Communications, LLC and Comcast Corporation ("Comcast") have agreed, subject to final approval by this Court following notice to the Settlement Class, to settle this action upon the terms and conditions set forth in the Release and Settlement Agreement (the "Settlement Agreement") dated **DATE** (Docket No. #). The Court has reviewed the Settlement Agreement (including all exhibits attached thereto), the Motion for Preliminary Approval, as well as all files, records, and proceedings to date in this matter, and the Court hereby orders as follows:

1. Except as specifically noted below, the Court for purposes of this Order Preliminarily Approving Class Action Settlement, Notice to Class Members, and Scheduling a Final Approval Hearing (the "Preliminary Approval Order") adopts the definitions set forth in the Settlement Agreement, unless otherwise defined herein.

2. Neither this Preliminary Approval Order, nor the Settlement Agreement, nor any of the terms or provisions thereto, nor any of the negotiations or proceedings connected with any of them, shall be referred to, offered as evidence, or received in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce the terms of the Settlement Agreement.

3. **Certification of Settlement Class**. Pursuant to the Settlement Agreement and for purposes of this settlement only, the Court certifies the following Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3):

> All Washington businesses, including businesses operated out of residences, who received one or more commercial solicitations from Comcast directly or through its agents through the use of an automatic dialing and announcing device during the period of February 19, 2006, through the entry of the Preliminary Approval Order.

This certification is effective and binding only with respect to proceedings related to or encompassed by the Settlement Agreement. If the Settlement Agreement terminates for any reason, this certification shall be vacated by its terms and the Action shall revert to the status with respect to class certification that existed before execution of the Settlement Agreement. In such event, Comcast's stipulation to this Settlement Class in conjunction with the Settlement Agreement shall not be construed as or raise any presumption of or inference of a concession or admission as to the propriety of certification of this class or any other.

The Court hereby finds and concludes, for settlement purposes of this settlement only, that the proposed Settlement Class satisfies all of the requirements for certification under Rule 23.

4. **Appointment of Class Representatives and Class Counsel**. Solely for purposes of effectuating the proposed Settlement Agreement, the Court finds the proposed class representatives, Plaintiffs above, to have claims typical of absent class members belonging to the Class and to be adequate representatives of those Class Members ("Class Representatives"). The Court hereby appoints Plaintiffs to serve as the Class Representatives. The Court further finds the firms of Williamson & Williams, Terrell Marshall Daudt & Willie PLLC, and Gallagher Law Offices, PS to have experience and expertise in prosecuting class actions such as this Action and hereby appoints this firm as Class Counsel.

5. **Preliminary Approval of Proposed Settlement.** The Court has reviewed the terms of the Settlement Agreement, as well as the papers submitted in connection with the Motion for Preliminary Approval, and all other relevant files, records and papers in this action. The proposed Settlement Agreement provides substantial monetary relief to the Settlement Class. The terms of the Settlement Agreement will be implemented by an independent Claims Administrator. The Court further concludes that the proposed Settlement Agreement is the result of extensive, arms-length negotiations between Plaintiffs and Comcast and was executed after Class Counsel had investigated the claims and evaluated the strengths and weaknesses of the Plaintiffs' claims. Based on all of these factors, the Court concludes that the proposed settlement has no obvious defects and is within the range of possible settlement approval, and that the Class Notice proposed herein is appropriate, and the Court hereby preliminarily approves the Settlement Agreement as fair, reasonable and adequate.

6. **Approval of Class Notice and Notice Plan.** The Parties have submitted for this Court's approval a proposed form of Class Notice, a postcard, and proposed to send by mail the Class Notice to all Class Members. The Court finds and concludes that the form of the Class Notice and its direct mailing constitute the best practicable notice under the circumstances and is as likely as any other form of notice to apprise Class Members of the Settlement Agreement, the certification of the Settlement Class for purposes of settlement, and Class Members' rights to opt-out, object, and/or make a claim. The Court further finds and concludes that Class Notice, and the agreement to mail it to Class Members is reasonable, that it constitutes due, adequate and sufficient notice to all Class Members entitled to receive notice, and that it meets the requirements of due

process, satisfying Fed. R. Civ. Proc. 23 and the Washington State and United States Constitutions.

Within fourteen (14) days after the entry of this Preliminary Approval Order, or as soon as reasonably practicable thereafter, the Parties shall cause the Class Notice, in substantially the same form as Exhibit B of the Settlement Agreement, to be mailed by the Claims Administrator by first-class mail, postage prepaid, as required by Settlement Agreement. Commencing with the mailing of the Class Notice, electronic copies of the Notice, Settlement Agreement, Claim Form, and relevant deadlines for Class Members shall be made available online at a website maintained by the Claims Administrator.

7. **Petition for Fee Award/Incentive Award.** No later than fifty four (54) days after date of entry of this Preliminary Approval Order, Class Counsel and Plaintiffs shall file their petition for a fee award and incentive award and cause a copy of the papers filed in support of the petition to be made available on the website maintained by the Claims Administrator.

8. **Deadline for Submitting Claim Forms.** All Class Members who do not timely exclude themselves from the proposed Settlement Agreement will be bound by the Settlement Agreement. Class Members who do not exclude themselves may submit a Claim Form in accordance with the terms of the Settlement Agreement. The Claim Form must be fully completed, signed under penalty of perjury and submitted in accordance with the terms of the Settlement Agreement within the sixty (60) day period commencing with the Class Notice Date for a Class Member to be considered by the Claims Administrator for approval to receive any Settlement Award.

9. **Final Approval Hearing.** The Court hereby schedules a final approval hearing on **November___, 2011**, at **TIME**, at the U.S. District Court for

the Western District of Washington, 700 Stewart Street, Seattle, WA 98101, ("Final Approval Hearing") at which time the Court will determine whether the Settlement Agreement is fair, reasonable and adequate and should be finally approved. At that time, the Court will determine whether to grant any incentive award or fee award requested by the Class Representatives or Class Counsel. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. At or after the Final Approval Hearing, the Court may enter a Final Judgment, substantially in the form of Exhibit C to the Settlement Agreement, that will adjudicate the rights of the Class Members.

10. **Papers in Support of Settlement.** The Parties to the Settlement Agreement may file any responses to objections by Class Members, if any, and additional papers in support of final approval of the proposed settlement no later than ten (10) calendar days prior to the Fairness Hearing.

11. **Right to Exclude.** Any Class Member may choose to be excluded from the Class by signing and returning a request for exclusion postmarked no later than **EXCLUSION DEADLINE**, as set forth more fully in the Class Notice and Paragraph 9 of the Settlement Agreement. Any Class Member who submits a valid request for exclusion shall have no rights under the Settlement Agreement. All Class Members who do not request exclusion shall be bound by this Court's orders, including without limitation any Final Approval Order or Final Judgment entered in this Action.

12. **Objections and Appearances**. Any Class Member may object to the fairness, reasonableness or adequacy of the Settlement Agreement or the petition for the fee award and incentive award. Class Members may do so either on their own or through counsel hired at their own expense. Any Class Member

who wishes to object to the Settlement Agreement or petition for the fee award and incentive award must file with the Court a written statement of objection, along with any other supporting materials, papers or briefs that he or she wishes the Court to consider, no later than sixty (60) days after notice is mailed and must by that same date serve such papers by first-class mail on the following counsel for the Parties:

Roblin Williamson, Esq.
Williamson & Williams LLP
17253 Agate St. NE
Bainbridge Island, WA 98110

Peter S. Ehrlichman, Esq.
Dorsey & Whitney LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98101-7043

Any Class Member who has served an objection may appear at the Final Approval Hearing, either in person or through counsel hired at the Class Member's expense, and object to the fairness, reasonableness or adequacy of the Settlement Agreement. Any Class Member who wishes to be heard at the Final Approval Hearing must also file with the Court a written notice of intent to appear by no later than sixty (60) days after notice is mailed, and must by that same date serve such notice of intent to appear on the counsel for the Parties at the addresses listed above. The Parties shall file any responses to Class Members' objections, if any, no later than **10 DAYS BEFORE FINAL APPROVAL HEARING**.

13. **Effect of Failure to Approve the Settlement Agreement.** In the event the Court or any other court: (a) disapproves, sets aside, or modifies the Settlement Agreement, (b) declines for any reason to enter or give effect to an order preliminarily approving the Settlement Agreement, (c) declines for any reason to enter or give effect to a final order approving the Settlement Agreement

and entering final judgment; or (d) holds that any final order approving the Settlement Agreement and entering judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way, then the Parties shall use their best efforts to effectively repair deficiencies in order to obtain Court approval, provided that such best efforts shall not be deemed to require Comcast to pay any additional sums than is provided herein, or receive any less percentage of funds retained as provided in Paragraph 4 herein. In the event such efforts are unsuccessful, and after the passage of sixty (60) days from the date of the Court's actions outlined in Paragraph 13 (a)-(d) herein, then the Settlement Agreement shall become null and void, the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of the Settlement Agreement, and the parties shall jointly move that any and all orders entered pursuant to the Settlement Agreement be vacated and shall proceed with the Action as if the Settlement Agreement had never been executed; provided, however, that in the event that the parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, the Settlement Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned.

14. **Stay of Proceedings.** All discovery and other pretrial proceedings between Plaintiffs and Comcast in this action are hereby stayed and suspended until further order of the Court, except such actions as may be necessary to implement the Settlement Agreement and this Preliminary Approval Order.

15. Defendant Comcast is further directed to file a statement by ____________________ indicating that notice to the appropriate government

officials has been provided as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b).

**IT IS SO ORDERED.**

Dated: ______________________

______________________________
Hon. Robert S. Lasnik
United States District Court Judge

Presented by:

**WILLIAMSON & WILLIAMS**

__________________________
Rob Williamson

WILLIAMSON & WILLIAMS
17253 Agate St. NE
Bainbridge Island, WA 98110
Telephone: 206.780.4447
Fax: 206.780.5557
Email: roblin@williamslaw.com

# — EXHIBIT B —

# NOTICE OF CLASS ACTION SETTLEMENT

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE MAY AFFECT YOUR RIGHTS. A WASHINGTON FEDERAL COURT HAS AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOU HAVE NOT BEEN SUED.**

Records show that you received one or more unsolicited pre-recorded calls mentioning Comcast at some time in between May 2008 and February 2011. If so, you are a class member in a lawsuit pending in the Western District of Washington, *Ed Hartman, et al. v. Comcast Business Communications, LLC, et al. C10-00413 RSL.* This lawsuit was filed against Comcast Business Communications, LLC, Comcast Corporation and Marketouch Media, Inc. alleging one or more of them improperly delivered or caused to be delivered pre-recorded phone solicitations on Comcast's behalf. This lawsuit has been settled. This notice informs you of: the court's certification of a class for settlement purposes; the nature of the claims alleged; your right to participate in, or exclude yourself from, the class; the proposed settlement; and how you can object to the proposed settlement or file a claim to request a settlement award.

The proposed settlement will resolve claims related to the delivery of all pre-recorded phone solicitations to businesses only in the State of Washington done by or on behalf of Comcast, including without limitation such solicitations done by its subsidiaries or agents. The proposed settlement will provide up to $100.00 for each call you received if you submit an approved claim form. If you are a member of the class, your legal rights will be affected whether you act or do not act. You should review the full settlement notice immediately as there are several important deadlines you must meet to take certain actions in connection with this proposed settlement. In particular, the deadline to file a claim form or exclude yourself from the proposed settlement is October __, 2011 and the deadline to object to the proposed settlement or class counsel's petition for attorney fees and the class representative's incentive fee is October __, 2011. Class counsel's petition for attorney fees and the class representatives' incentive fees will be posted to the website listed below no later than September __, 2011. The Court is scheduled to hold a final approval hearing for final approval of the settlement on November -- 2011. A copy of the claim form, settlement agreement and full class notice—which includes information on how to exclude yourself from the class, object to the proposed settlement and submit a claim form—may be obtained by contacting the claims administrator at PHONE NUMBER and Claims

Administrator, PO Box 2518, Faribault, Minnesota 55021-9518 or by visiting the claims administrator's website at: www.ComcastSettlement.com.

# — EXHIBIT C —

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | |
|---|---|
| ED HARTMAN, a sole proprietorship doing business as OLYMPIC MARIMBA RECORDS, ED HARTMAN PERCUSSION STUDIO and THE DRUM EXCHANGE; JANET HODGIN and MICHAEL HODGIN, a partnership doing business as KIDS NORTHWEST; and MICHAEL A. SPAFFORD, a sole proprietorship doing business as "SPIKE" MAFFORD PHOTOGRAPHY, individually and on behalf of a class of Washington residents similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>COMCAST BUSINESS COMMUNICATIONS, LLC, a Pennsylvania corporation, COMCAST CORPORATION, a Pennsylvania corporation and its subsidiaries and affiliates; MARKETOUCH MEDIA, INC., a Texas corporation,<br><br>Defendants. | CIVIL ACTION NO. C10-00413 RSL<br><br>**[PROPOSED] FINAL ORDER AND JUDGMENT** |

On ____________, a hearing was held on the motion of plaintiffs for final approval of the Release and Settlement Agreement dated ___________ reached in the above-referenced matter (the "Settlement Agreement") (Docket No. #__) and seeking entry of a final judgment concluding this Action. The Court, having considered the arguments of the parties, the papers submitted in support thereof, and all other matters properly before the Court, hereby **ORDERS** as follows:

1. Except as specifically noted below, the Court for purposes of this Final Order and Judgment adopts the definitions set forth in the Settlement Agreement, unless otherwise defined below.

2. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class they seek~~s~~ to represent; (d) Class Representatives fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

> All Washington businesses, including businesses operated out of residences, who received one or more commercial solicitations from Comcast directly or through its agents through the use of an automatic dialing and announcing device during the period of February 19, 2006, through the entry of the Preliminary Approval Order.

A list of those Persons who have timely and properly requested exclusion from the Class is appended to this Final Approval Order as Attachment 1.

3. This Court has jurisdiction over the subject matter of this Action and over all parties to the Settlement Agreement, including all Class Members.

4. The Class Notice delivered pursuant to the Court's preliminary order of approval, dated ________, (the "Preliminary Approval Order") (Docket No. #__) constituted the best notice practicable under the circumstances to all potential members of the Class and fully complied with Fed. R. Civ. Proc. 23(e)(1). The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement Agreement and allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and any other applicable law. A full opportunity has been offered to the Class Members to object to the proposed Settlement and to participate in the hearing thereon. Thus, it is hereby determined that all Class Members who did not timely elect to exclude themselves by written communication are bound by this Order and Final Judgment.

5. The settlement set forth in the Settlement Agreement is hereby finally approved as fair, reasonable and adequate to all parties and Class Members pursuant to Fed. R. Civ. Proc. 23(e)(2).

6. All Class Members: (1) are bound by this Final Judgment; (2) are forever barred from instituting, maintaining, or prosecuting any of the Released Claims; and (3) have released and discharged defendants from any and all liability with respect to such Released Claims, including but not limited to claims for attorneys' fees, costs, and expenses. The Released Claims are set forth in Paragraph 13.1 of the Settlement Agreement, which states:

> Upon final approval of the terms of this Settlement Agreement by the Court, the Class Members, on behalf of themselves, their descendants, ancestors, dependents, heirs, executors, and administrators, and on behalf of each of their past and present predecessors, successors, assigns, subsidiaries, affiliates, parents, operating entities, employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, jointly and severally, fully and forever release Comcast and Marketouch, and each of their past and present predecessors, successors, assigns, subsidiaries, affiliates,

and operating entities, and each of their respective past and present employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, of and from any claim, duty, obligation, lien, demand, damage, cause of action, or liability of any nature whatsoever, whether or not now known, suspected, pled, or claimed, whether raised by claim, counterclaim, setoff or otherwise, that any of them ever had, now has, or may claim to have had, that relates to, or otherwise arises from the Action or any allegations or claims raised therein (the "Released Claims"). Released Claims do not include (1) claims arising from the delivery of pre-recorded messages that were not delivered by or on behalf of Comcast; or (2) claims that do not arise as a result of Comcast directly or indirectly using an automatic dialing and announcing device for business to business solicitation calls.

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7. Neither the Settlement Agreement, nor any of its terms or provisions, nor any document executed pursuant to it, nor any other act taken to negotiate it or carry it out, shall be construed as or raise any presumption or inference of any concession or admission, or any waiver of any right, claim or defense of any party or any Class Member, except insofar as such rights, claims or defenses are expressly released or discharged by this Final Judgment.

8. Neither this Final Order and Judgment, the Settlement Agreement, nor any of the negotiations, documents or proceedings connected with them shall be:

(a) offered or received against the defendants Comcast and Marketouch (the "Defendant(s)")as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any Defendant;

(b) offered or received against any defendant as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statements or written document approved or made by any Defendant;

(c) offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to or for any other reason as against the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, Released Parties (as defined in the Settlement Agreement) may refer to it to effectuate the liability protection granted them hereunder including to support a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) construed against Defendants or the Class Members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

9. (e) construed as, or received in evidence as, an admission, concession or presumption against the Plaintiffs or the Class Members that any of their claims are without merit or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount. The Court reserves jurisdiction over the Parties, including all Class Members, for purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement.

10. The Court approves and directs that all Class Members who have submitted valid claims (a total of ________ Class Members) be paid $100 per call received. This amount totals $______________________.

11. The Court further directs Comcast to pay two hundred eighty-five thousand dollars and no cents ($285,000.00) to the Legal Foundation of Washington and two hundred eighty-five thousand dollars and no cents ($285,000.00)), in equal shares,to El Centro de la Raza and Neighborhood House.

12. The Court orders Comcast to pay up to two hundred-and-fifty thousand dollars and no cents ($250,000.00) to the Claims Administrator for claims administration costs. The Court orders Comcast to pay any claims administration costs in excess thereof, if any, to the Claims Administrator, and if claims administration costs are less, the excess funds will be retained by Comcast.

13. The Court hereby approves an award of Class Counsel attorneys' fees and costs of Eight Hundred Seventy Thousand Dollars ($870,000.00) to be paid by Comcast in the manner provided in the Settlement Agreement.

14. None of the payments specified in Paragraphs 10-13, *supra* are the liability of Comcast except as provided in the Settlement Agreement.

15. The Court further hereby approves an incentive payment of $10,000 to each Lead Plaintiff to be paid as provided in the Settlement Agreement. This payment is not a liability of Comcast except as provided in the Settlement Agreement.

16. Plaintiffs' claims against Comcast and Marketouch are hereby dismissed with prejudice and with all parties to bear their own costs and fees.

**IT IS SO ORDERED.**

Dated: ______________________

______________________________
Hon. Robert S. Lasnik
United States District Court Judge